
(1960) 12 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Second Appeal No's. 30 and 38 of 1960

L. Bhagwan Das Mengi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-12-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Contract Act, 1872 — Section 28

Jammu and Kashmir Houses and Shops Rent Control Act, 2009 — Section 1(3)

Transfer of Property Act, 1882 — Section 106, 111

Citation : AIR 1961 J&K 39

Hon'ble Judges : J.N. Wazir, C.J;S. Murtaza Fazl Ali, J

Bench : Division Bench

Advocate : Inder Das Grover, for the Appellant; Bansi Lal Suri, for the Respondent

Judgement

J.N. Wazir, C.J.—The plaintiff instituted a suit for the recovery of Rs. 1,000/- as damages for wrongful use and occupation of the suit

premises with proportionate costs against the defendants. The plaintiff alleged that 10 years lease in favour of the defendants, of 'Bhagwan Niwas'

situate in Jammu expired on the 11th of January, 1959. The defendants were required to hand over vacant possession of the premises together

with furniture and fittings on that date which the defendants failed to do.

It was alleged that a notice u/s 80 of the CPC was delivered to them on 25th and 26th August 1958, informing the defendants that the plaintiff will

charge Rs. 500/- P. M. as damages for wrongful use and occupation of the premises. The defendants failed to vacate the premises on the date

mentioned in the notice and hence this suit for recovery of Rs. 1,000/- as damages for wrongful use and occupation of the premises at the rate of

Rs. 500/- P. M. for a period of two months.

The defendants resisted the suit on the grounds, that the suit was not maintainable in view of arbitration clause in the lease agreement and in view of

Section 28 of the Contract Act, that the Jammu and Kashmir Houses and Shops Rent Control Act of 2009 was applicable to the house in question

and the plaintiff landlord was not entitled to demand or receive any enhanced rent for the same and that no valid notice of ejectment was given to

the defendants determining the lease.

It was further pleaded that the lease not having been terminated the plaintiff was not entitled to damages for wrongful use and occupation of the

building. Lastly, it was averred that damages at the rate of Rs. 500/- P. M. were penal and excessive. Defendant No. 2 pleaded that he was

improperly made a party to the suit and that his name was liable to be struck off. The trial Court raised various issues, the important ones among

them are as follows:

1. Whether the suit is not maintainable in view of the arbitration clause in the lease agreement and in view of Section 28 of the Contract Act, if so

how? O.P.D.

2. Whether the provisions of Houses and Shops Rent Control Act apply in this case, if so what is its effect on the suit? O.P.D.

3. Whether the notice to quit was required to be given in the present case? O.P.D. and

4. Whether the plaintiff is entitled to Rs. 500/- P. M. as damages for wrongful use and occupation of the suit premises by the defendants from 12-

1-1959, if so how? O.P.P.

On examining the evidence adduced by the parties the trial Court found that the suit was maintainable, that the notice to quit was not necessary and

the tenancy had expired by efflux of time and that the defendants were liable to pay damages for wrongful use and occupation of the premises but

that the amount claimed by the plaintiff was excessive.

The plaintiff's claim was decreed to the extent of Rs. 400/- at the rate of Rs. 200/- P. M. On appeal the learned District Judge affirmed the findings

of the trial Court but as regards damages the plaintiff was held to be entitled to claim damages at the rate of Rs. 384/- P. M. A decree for Rs.

768/- with proportionate costs was made in favour of the plaintiff against defendant No. 1 and the suit against defendant No. 2 was dismissed.

Against this judgment and decree of the District Judge the plaintiff has come up in further appeal and the defendant No. 1 has also filed a cross-

appeal. Both these appeals will be disposed of by this order.

2. On behalf of the plaintiff appellant it is argued that the District Judge has erred in reducing the amount claimed by the plaintiff in his plaint. It has

been pointed out that the District Judge has not given any good reason for reducing the amount of Rs. 500/- to Rs. 384/- P. M., especially when

the plaintiff appellant had proved that he was offered Rs. 500/- P. M. for the house if the defendant had vacated it on the date mentioned in the

notice.

The argument on behalf of the defendant appellant in his cross appeal is that the suit was not maintainable in view of clause 15 in the lease

agreement. We have perused clause 15 of the lease agreement relied upon by the defendant. In our opinion the suit does not fall within the ambit of

this clause and, therefore, the question of referring the matter to arbitration does not arise. Clause 15 of the lease agreement runs as follows:

Should any dispute or difference arise out of or concerning the subject matter of these presents or any covenant, clause or thing therein contained

or otherwise arising out of the tenancy aforesaid the same shall be referred to an arbitrator to be appointed by the Government of India and the

decision of such arbitrator shall be conclusive and binding on the parties hereto. The provisions of Arbitration Act, 1940 shall apply to such

arbitration." it is not disputed that the tenancy commenced on the 12th of January, 1949. Under clause 14 of the lease agreement there was an

option given to the defendant to renew the lease on the same terms and subject to the same covenants and conditions as contained in the previous

lease for a further term of 5 years commencing from and after the expiration of the first term. It is common ground between the parties that the

defendant took the premises on lease for a further term of 5 years on the same rent and conditions as mentioned to the previous agreement. The

second term of 5 years expired on 12th January, 1959. The plaintiff served a notice on the defendant calling upon him to vacate the premises on

the 12th of January 1959, failing which he would charge Rs, 500/- P. M. as

damages for wrongful use and occupation of the premises.

The lease as mentioned above was for a period of 10 years commencing from 12th January, 1949. u/s 111(a) of the Transfer of Property Act the

lease had terminated by efflux of time. Although no notice to quit in this case was necessary yet the plaintiff served a notice on the defendants on

25th and 26th August 1958 requesting them to vacate the premises on the expiry of the tenancy, i.e. the 12th of January, 1959.

Learned Counsel for the defendant appellant has argued that as the lease had not been renewed under the terms of clause 14 of the lease

agreement the defendant was merely a tenant holding over after the expiry of the first lease and therefore a notice in terms of Section 106 of the

Transfer of Property Act was necessary. It is contended that as the notice did not expire with the end of the month of the tenancy it was bad in

law.

This contention, in our opinion, is without any force. Even assuming the defendant to be a tenant holding over the notice served by the plaintiff

expired with the end of the month of the tenancy. The notice was given in the month of August and the defendant was asked to vacate the premises

on 12th January, 1959. The tenancy commenced on the 12th of January, 1949 and the notice calling upon the defendant to vacate the premises

expired with the end of a month of the tenancy, i.e. on the midnight of 12th January, 1959.

The plaintiff had not mentioned in the notice any particular time on the 12th of January for vacating the premises. He had merely mentioned the date

on which the defendant had to vacate. The defendant could have complied with the terms of the notice by vacating the premises at midnight of 12th

January, 1959. The notice, therefore, was perfectly valid because the lease commenced on 12th January, 1949, for a term of 10 years and ended

on the midnight of 12th January, 1959.

The notice, therefore, expired with the end of the month of tenancy. In AIR 1932 279 (Privy Council) it was held that a lease from the 1st June

1921 for a term of four years ends on the midnight of 1st June 1925 and a notice given by the lessee on 1st February 1928 for leaving the

premises on 1st March 1928 is a notice expiring with the end of a month of the tenancy.

In the present case the tenancy having expired either by efflux of time or by the notice served on the defendant asking him to vacate the premises

on 12th January, 1959, the defendant, in occupation of the premises, was a trespasser after the termination of the lease. The dispute did not arise

out of the tenancy and, therefore, clause 15 of lease agreement has no application to the present case. Under these circumstances it is not

necessary to go into the question whether or not the amendment of Section 28 of the Contract Act referred to by the learned Counsel for the

plaintiff has any effect on the suit.

3. Learned Counsel for the defendant appellant argued that Houses and Shops Rent Control Act was applicable to the house in dispute and

therefore the landlord could not claim enhanced rent. We do not see any force in this contention. Section 1(3-a) of the Houses and Shops Rent

Control Act of 2009 specifically provides that the Act is not applicable to any house or premises belonging to or taken on lease or requisitioned by

the Government. The house having been taken on lease by Union of India learned Counsel for the defendant appellant had to concede that the

above Act was not applicable to this case.

4. It was strenuously argued on behalf of the defendant appellant that the plaintiff was not entitled to Rs. 500/- P. M. as damages for use and

occupation of the building which was rented out at Rs. 200/- P. M. The learned Counsel submitted that the amount of Rs. 384/- P. M. allowed by

the District Judge was penal. He has not, however, been able to cite any authority for the proposition that if the tenant after the termination of the

lease remains in occupation of the premises without replying to the notice to vacate, served on him by the plaintiff landlord, he is not liable to pay

damages to the plaintiff more than the amount of rent due from him.

On the other hand, there are a number of rulings of different High Courts wherein it has been laid down that if the tenant after the expiry of the

lease remains in occupation of the premises in spite of the fact that the landlord served a notice on him to vacate and warned him that if he remains

in occupation he will have to pay a specified sum as damages for wrongful use and occupation of the building, the defendant will be liable to pay

that amount provided it is not penal and unconscionable.

In support of this view reliance may be placed on an authority of the Lahore High

Court, Sundar Singh v. Ram Saran Das, reported in AIR 1933

Lah 61 in which it has been held that the defendants having held over contumaciously the plaintiff was clearly entitled to damages. In case Kuman

Das and Another Vs. Radhika Singh and Another, it was pointed out that a cause for the payment of the enhanced rent in a lease is not penal,

when apparently it is not introduced into the lease to compel the performance of an act stipulated in the contract but is merely an option given to

the lessee which he may accept or reject as he chooses; hence a stipulation to pay a higher rent if the lessee remains in occupation after the expiry

of the lease is neither penal nor an unreasonable one. AIR 1940 140 (Nagpur) is also to the same effect

In this ruling it has been held that where landlord gives notice to his tenant that he would be charged at an enhanced rate from a certain date and

should vacate if he does not accept the enhancement and the tenant refuses to pay enhanced rent and he also refuses to vacate, he should be

deemed to have accepted the enhanced rent in spite of his refusal. Of course the Court has a discretion in the matter, and when the enhanced rate

demand is obviously penal and impossible the Court would not grant it.

There is also a ruling of this Court, Jogeshwar Kumar v. Mst. Suwarn Kour, reported in 2 J&K LR 42 on this point. It has been held therein that in

considering what sum should be allowed for use and occupation or for damages for contumacious holding over, the whole circumstances of the

tenancy and sufficiency in point of time of notice have to be taken into consideration. In the present case the plaintiff has adduced evidence to show

that he was offered Rs. 500/- P. M. as rent for the premises in case it was vacated by the defendant on expiry of the lease.

But the defendant did not vacate the premises on the date specified in the notice and the plaintiff had to suffer loss on account of the occupation of

the premises by the defendant after the expiry of the lease. The District Judge has neither discussed the evidence adduced by the plaintiff nor has

he given any reasons for discarding it. The defendant has produced evidence to show that some houses in that area are let out for lesser rent.

That evidence is of no avail to the defendant in view of the fact that these houses are not in close vicinity nor have they the same accommodation

and amenities. In view of the fact that there is evidence to show that the plaintiff

was offered Rs. 500/- as rent P. M. and there is no reason to disbelieve this testimony of the witnesses of the plaintiff it is not necessary for us to determine what would be the fair rent of the house.

The defendant did not reply to the notice and retained possession of the premises after the expiry of the lease and this caused a loss to the plaintiff

to the extent of Rs. 500/- P. M. Under these circumstances the amount claimed by the plaintiff does not appear to be excessive and he is entitled

to recover the same from the defendant. We therefore, allow the appeal of the plaintiff and decree his claim in full. The defendant's appeal under

these circumstances is dismissed. In view of the peculiar circumstances of the case we leave the parties to bear their own costs in this Court.

S. Murtaza Fazl Ali J.

5. I agree.